

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

<b>In re:</b>  <b>STEVEN GAINES,</b>  <b>Debtors</b>	<b>* CASE NO. 18-60188</b> <b>*</b> <b>* CHAPTER 7</b> <b>*</b> <b>* HON. RONALD B. KING</b>
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**MOTION FOR RELIEF FROM STAY**  
**(to proceed with state court litigation)**

**AN ORDER MAY BE ENTERED FOR THE RELIEF REQUESTED  
HEREIN WITHOUT FURTHER HEARING UNLESS A WRITTEN  
OBJECTION AND REQUEST FOR HEARING IS FILED WITH THE  
CLERK OF THE COURT WITHIN FOURTEEN (14) DAYS OF THE DATE  
OF SERVICE OF THIS MOTION.**

**ANY SUCH OBJECTION MUST ALSO BE SERVED UPON THE MOVING  
PARTY AND UPON ALL OTHER PERSONS INDICATED ON THE  
CERTIFICATE OF SERVICE ATTACHED TO THIS PLEADING.**

TO THE HONORABLE BANKRUPTCY JUDGE:

NOW COMES BRAD BOOZER (“Plaintiff”), a creditor herein, and files this Motion For Relief From Stay, and in support thereof, would respectfully show:

1. This court has jurisdiction of this matter pursuant to 28 U.S.C. Sec. 1334 and 11 U.S.C. Sec. 362(d). This is a core proceeding.
2. The Debtor filed this Chapter 7 petition in bankruptcy on March 15, 2018. James Studensky has been appointed as the interim Trustee in this case. The creditors’ meeting was held and concluded on April 11, 2018.
3. The Debtor is currently a named defendant in Cause No. 2017-2262-5, a state court case currently pending in the 414th District Court in McLennan County, Texas. The suit was filed by Plaintiff in order to recover money damages from the Debtor under

several causes of action including, but not limited to, conversion, breach of fiduciary duty and fraud. A true and accurate copy of the Plaintiff's most recent amended petition in the state court suit is attached hereto as Exhibit A.

4. The state court case was scheduled for trial on March 19, 2018, when the Debtor filed his bankruptcy petition on March 15. Because of the automatic stay imposed under 11 U.S.C. Sec. 362, the litigation is stayed and Plaintiff is prevented from pursuing his claims against the Debtor and reducing them to judgment.

5. Movant seeks relief from the automatic stay as to the pending litigation for cause, so that the Plaintiff may proceed to have his claims against the Debtor determined and liquidated in state court. All discovery in the state court suit is completed, the pre-trial hearing had been concluded, and the case is ready for trial. Plaintiff believes that the case can be tried in the state court more expeditiously than in bankruptcy court and that Plaintiff can obtain a trial setting relatively quickly. Further, the state court judge is more familiar with the facts of the case as a result of hearing numerous motions throughout the course of the litigation.

6. Plaintiff believes that his claims against the Debtor are non-dischargeable, and, therefore, Plaintiff will be filing an objection to the dischargeability of this debt in the Debtor's bankruptcy case. Plaintiff further believes that the state court suit will be concluded well in advance of any adversary proceeding trial setting in the bankruptcy court.

7. By reason of the pending litigation in McLennan County, good cause exists to terminate the automatic stay of 11 U.S.C. §362 of the Bankruptcy Code in order to allow

the Plaintiff to have the state court determine the nature and extent of Plaintiff's claims against the Debtor.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order lifting the stay as to the state court litigation, and grant Plaintiff such other relief to which he may be justly entitled.

Respectfully submitted,

PAKIS GIOTES PAGE & BURLESON,  
P.C.

/s/ David C. Alford  
David C. Alford  
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Attorneys for Plaintiff

#### **CERTIFICATE OF CONFERENCE**

In accordance with Local Bankruptcy Rule 9014-1(d)(1), I certify that I have conferred with Evan M. Simpson, counsel for the Debtor on this matter, and he is opposed to the relief requested herein.

/s/ David C. Alford  
David C. Alford

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the attached Agreed Motion to Lift Stay was served on the following parties by electronic means as listed on the Court's ECF noticing system or by regular first-class mail on this 8th day of May, 2018:

Steven Gaines  
7012 Fish Pond Road  
Waco, TX 76710

Debtor

Evan M. Simpson  
3925-A South Jack Kultgen Freeway  
Waco, TX 76706

Debtor's attorney

James Studensky, Trustee  
3912 W. Waco Drive  
Waco, TX 76710

Trustee

/s/ David C. Alford  
David C. Alford